

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc.No.A-1951-MA of 2015

Date of Decision : January 25, 2016

Dalbir Kaur

.....Applicant

Versus

State of Punjab and another

....Respondents

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present : Mr. Amit Arora, Advocate
for the applicant.

T.P.S. MANN, J.

The complainant has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated July 06, 2015 passed by learned Additional Sessions Judge, Tarn Taran, whereby respondent No.2-Subegh Singh, here-in-after referred to as 'the accused', stood acquitted of the charge under Section 376 IPC.

According to the complainant, she was married with one Darshan Singh about thirty year ago, who died in the year 1997. On 30.4.2010 at about 5.00 p.m., she made telephone call to the accused that her case of Will was fixed for evidence in the Court of Sub Divisional Magistrate, Tarn Taran on 4.5.2010 and as the Will, which

was executed by her husband's father's sister in her favour and got scribed by the accused himself and had also arranged witnesses but she did not know about the Deed Writer. The accused told her that he would provide her information about the witnesses. She further stated that the accused had been cultivating her land for the last twenty years and, therefore, they were on visiting terms with each other. At 8.30 p.m., when she was present at Bus Stand, Sarhali Kalan, the accused reached there on a motorcycle and she accompanied him for meeting the Deed Writer. Both of them left on the motorcycle and when they crossed village Sarhali Kalan, she asked from the accused as to where the Deed Writer was residing. He replied that he was residing at Patti. They came across her brother-in-law Gurbachan Singh to whom she apprised that she was going to meet the witnesses and Deed Writer of the Will. The accused stopped his motorcycle at Nadohar Chowk, Patti. When she asked him as to why he had stopped the motorcycle, he replied that his motorcycle had run out of petrol. The accused, thereafter, gagged her mouth with his hands and after lifting her, took her on the western side of the shop. After threatening her, he tore her clothes and subjected her to rape. She raised hue and cry, which attracted Jasbir Kaur, who was passing by. Said Jasbir Kaur hired a rickshaw for her and, accordingly, she reached Police Station, Patti where she informed the police of the entire episode. However, neither her medical examination was got conducted nor docket given to her. She obtained

docket from the Court on 1.5.2010 and got herself medically examined. As the police did not take any action, she filed the criminal complaint.

Having heard learned counsel for the applicant and on going through the impugned judgment, this Court finds that in her complaint, the complainant had alleged that she had called the accused on phone on 30.4.2010 at about 5.00 p.m. as her case relating to the Will executed by her husband's father's sister in her favour was fixed for evidence for 4.5.2010 and she wanted to have a meeting with the Scribe as well as the witnesses of the Will because the accused had got scribed the Will in her favour and had also arranged the witnesses. However, in the application moved before the Sub Divisional Judicial Magistrate, Patti for getting herself medico-legally examined, she had stated that the case qua inheritance of her husband was pending in the Court of Sub Divisional Magistrate-cum-Assistant Collector 1st Grade, Tarn Taran and message in this regard had been sent to the accused to meet her on 30.4.2010 at Nadohar Chowk, Patti. She met the accused, who told her that the witnesses were standing behind a shop situated at Nadohar Chowk, Patti and the applicant was taken to that place where she was forcibly raped by the accused against her wishes and consent. Thus, there were conflicting versions of the occurrence as given by the complainant, one at the time of submitting application before the Sub Divisional Judicial Magistrate while the other when she instituted the criminal

complaint.

According to the complainant, the hue and cry raised by her while the accused was subjecting her to rape, attracted PW2 Jasbir Kaur, who was none-else than her neighbour. If PW2 Jasbir Kaur had been so attracted and the complainant was her neighbour, she ought to have accompanied the complainant to the Police Station for lodging the report which she did not do. Presence of PW2 Jasbir Kaur at the spot was, thus, doubtful. At the same time, the complainant failed to examine Sukhdev Singh, son-in-law of PW2 Jasbir Kaur, who was accompanying her and attracted on hearing the hue and cry raised by the complainant. The complainant also did not examine Gurbachan Singh, who according to her had seen her going on a motorcycle with the accused.

As per the medical evidence brought on record through the testimony of PW3 Dr. Harpoonam Manku, there was no injury on the private parts of the prosecutrix. Even no signs of struggle were present on any part of the body. Further, as per DNA test report, which is available is on the record as Ex.DX/4, the sources of Ex.B (blood sample of the accused), Ex.C (salwar of the victim), Ex.D (kameej of the victim), Ex.E (bra of the victim), Ex.F (underwear of the victim) and Ex.G (dupatta of the victim) did not yield any DNA suitable for analysis. The source of Ex.A was not subjected to DNA isolation since it was of the same source as of Ex.B.

It has come on the record that on the complaint submitted by the complainant, an enquiry was conducted by DW8 Sub Inspector Sakattar Singh and DW7 Inspector Hardeep Singh and both of them came to the conclusion that no such occurrence had taken place.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

The application is without any merit and, accordingly, dismissed.

Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 25, 2016
satish